

Headquarters U.S. Air Force

Integrity - Service - Excellence

Worldwide First Sergeants Conference



**Major General Thomas J.
Fiscus**

The Judge Advocate General

August 2004

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Overview

- **Military Justice Trends**
- **The Military Justice Environment**
- **The Philosophy of Discipline**
- **Quality of Life Issues**



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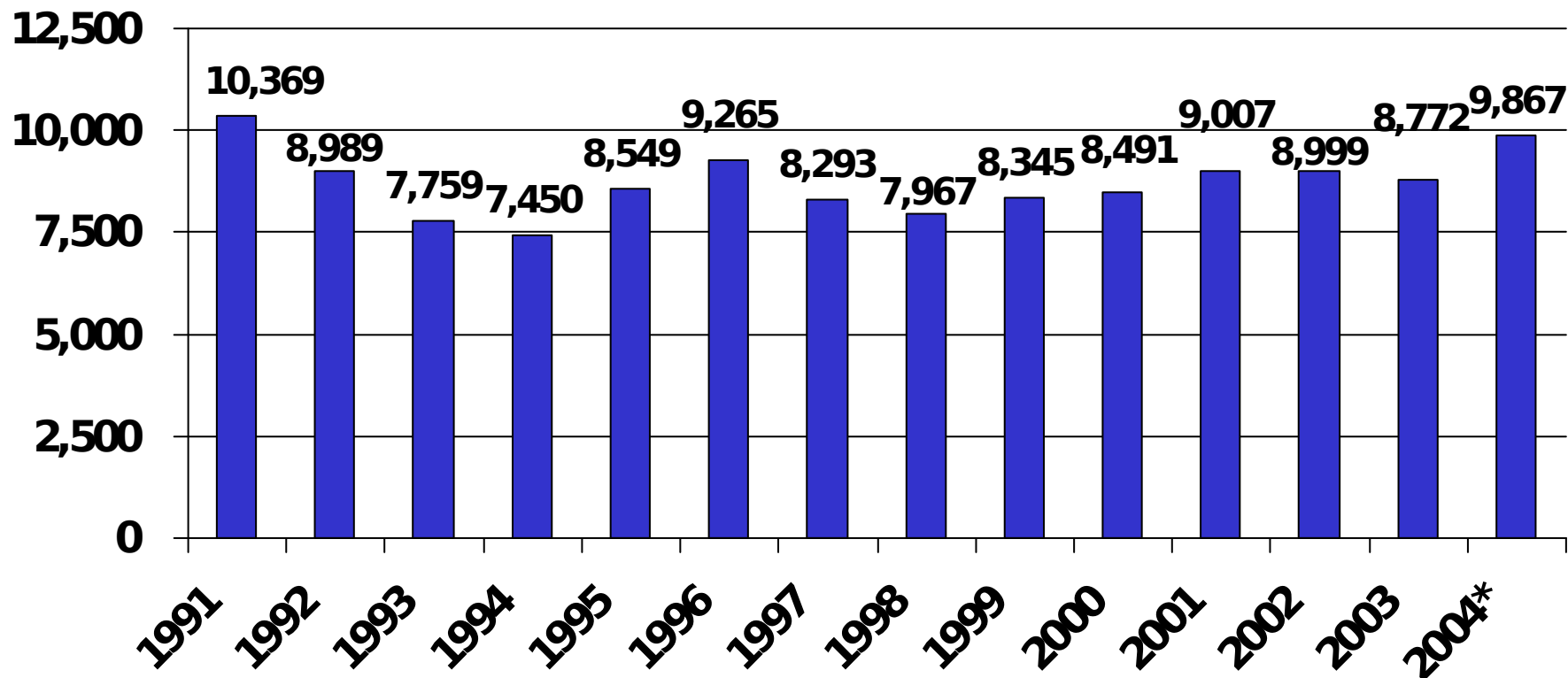
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Article 15 Actions



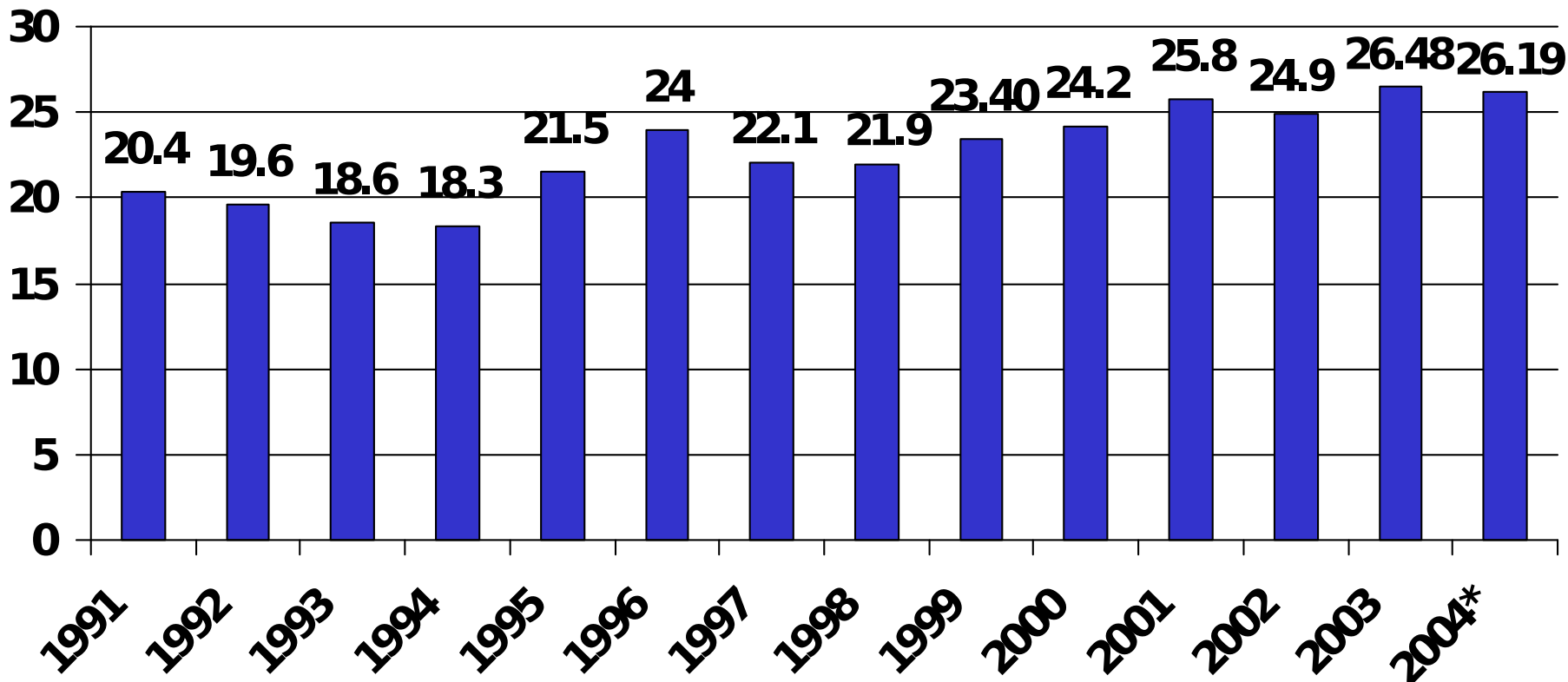
**Projected as of 31 Jul 04*



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Article 15 Actions

Rate Per Thousand

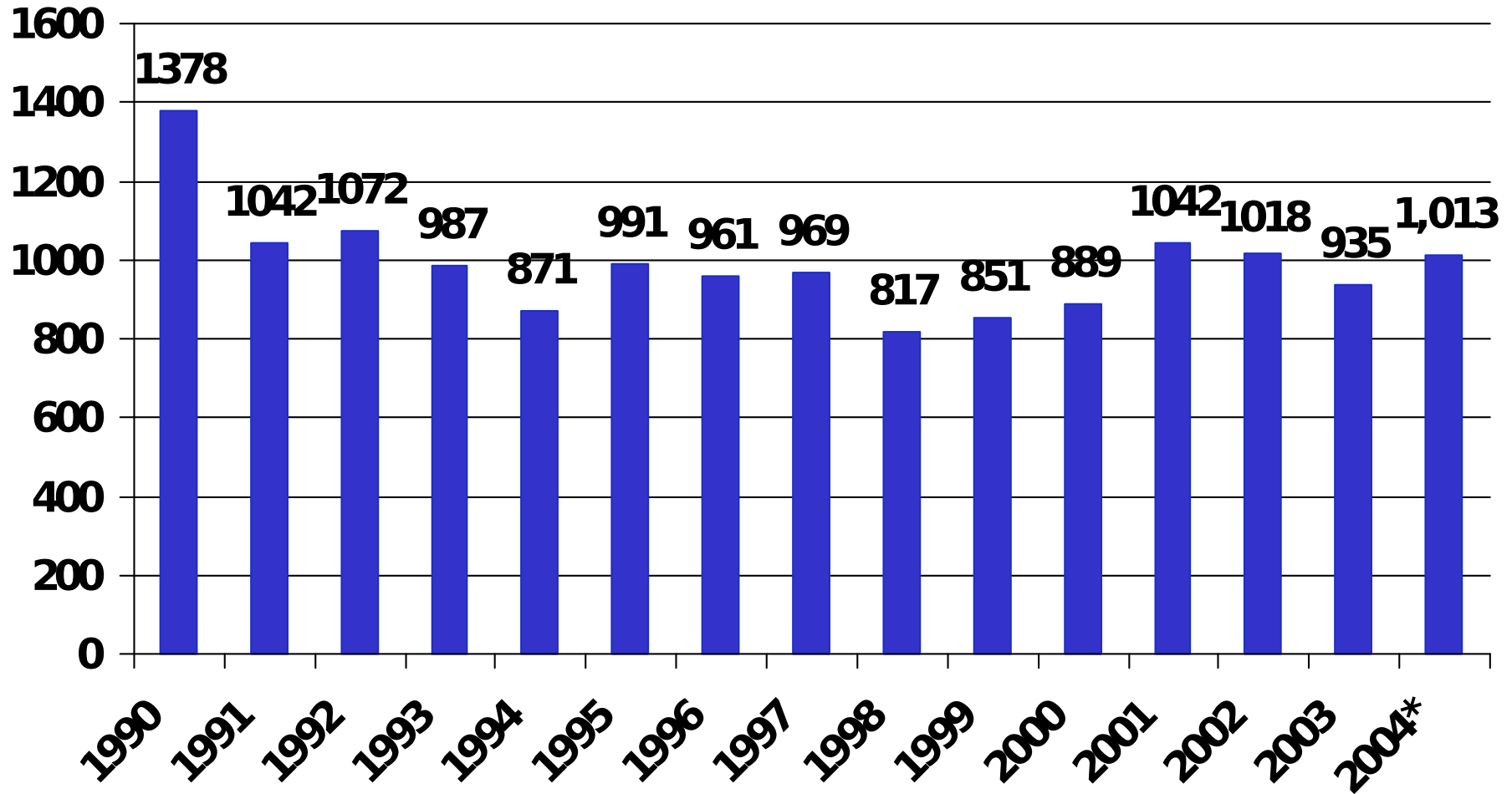


**Projected as of 31 Jul 04*



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Courts-Martial



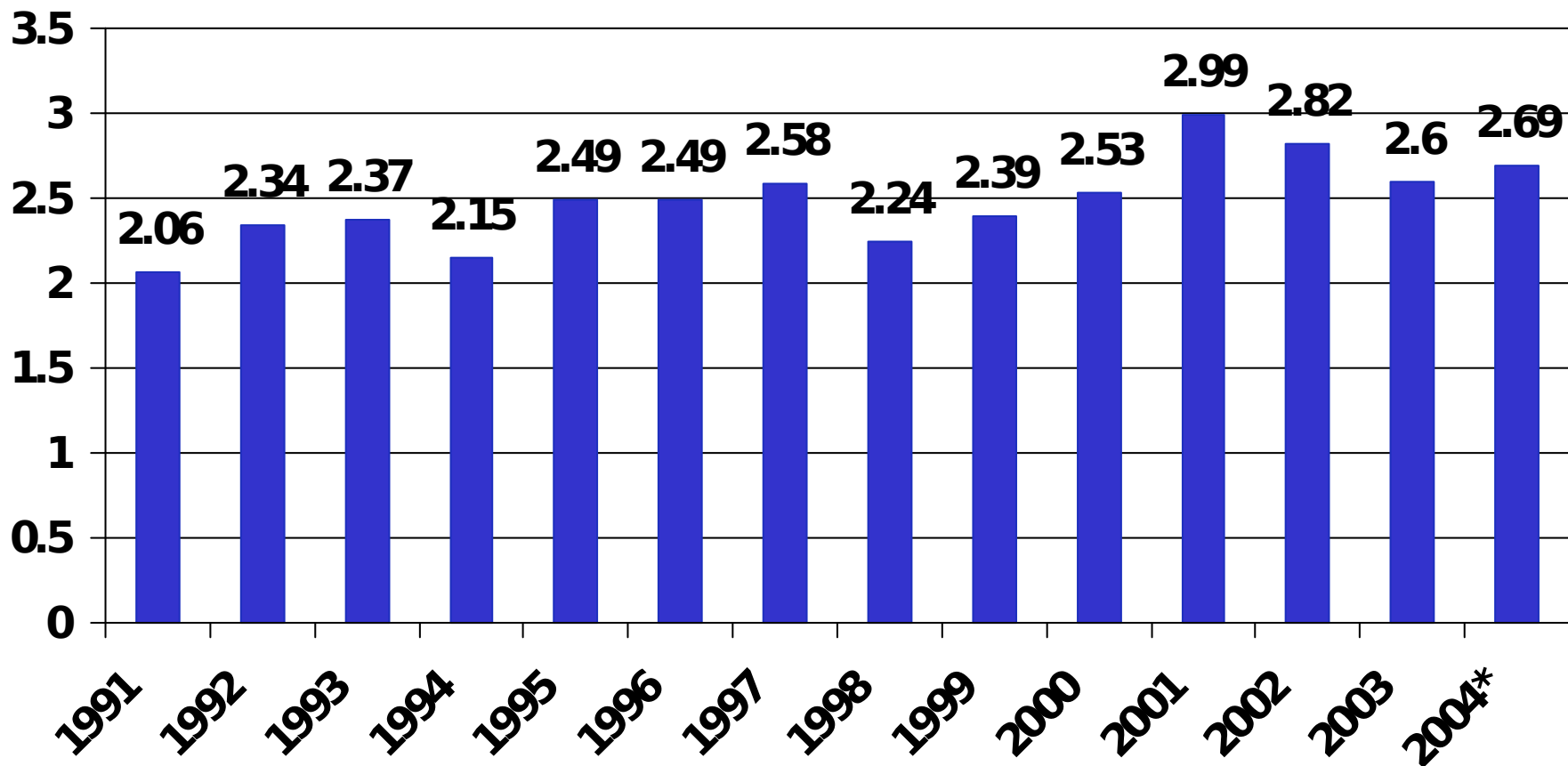
**Projected as of 31 Jul 04*



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Courts-Martial

Rate Per Thousand



**Projected as of 31 Jul 04*



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Military Justice Trends

- ▼ **■ Decrease in number of courts-martial since 2001**
 - Number of special courts exceeds general courts
 - Increase in summary courts since 1996, leveled in last 3-4 years
 - Projected increase this year
- ▲ **■ Slight increase in Article 15 actions (relatively constant over the last three years)**
- ▲ **■ Increase in officer misconduct**
- Nonconsensual sexual offenses roughly same as 2003 -- approximately 12% of all courts-martial**
- Most common Article 15: Failure to obey, Article 92**



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Military Justice Trends

Drug Cases

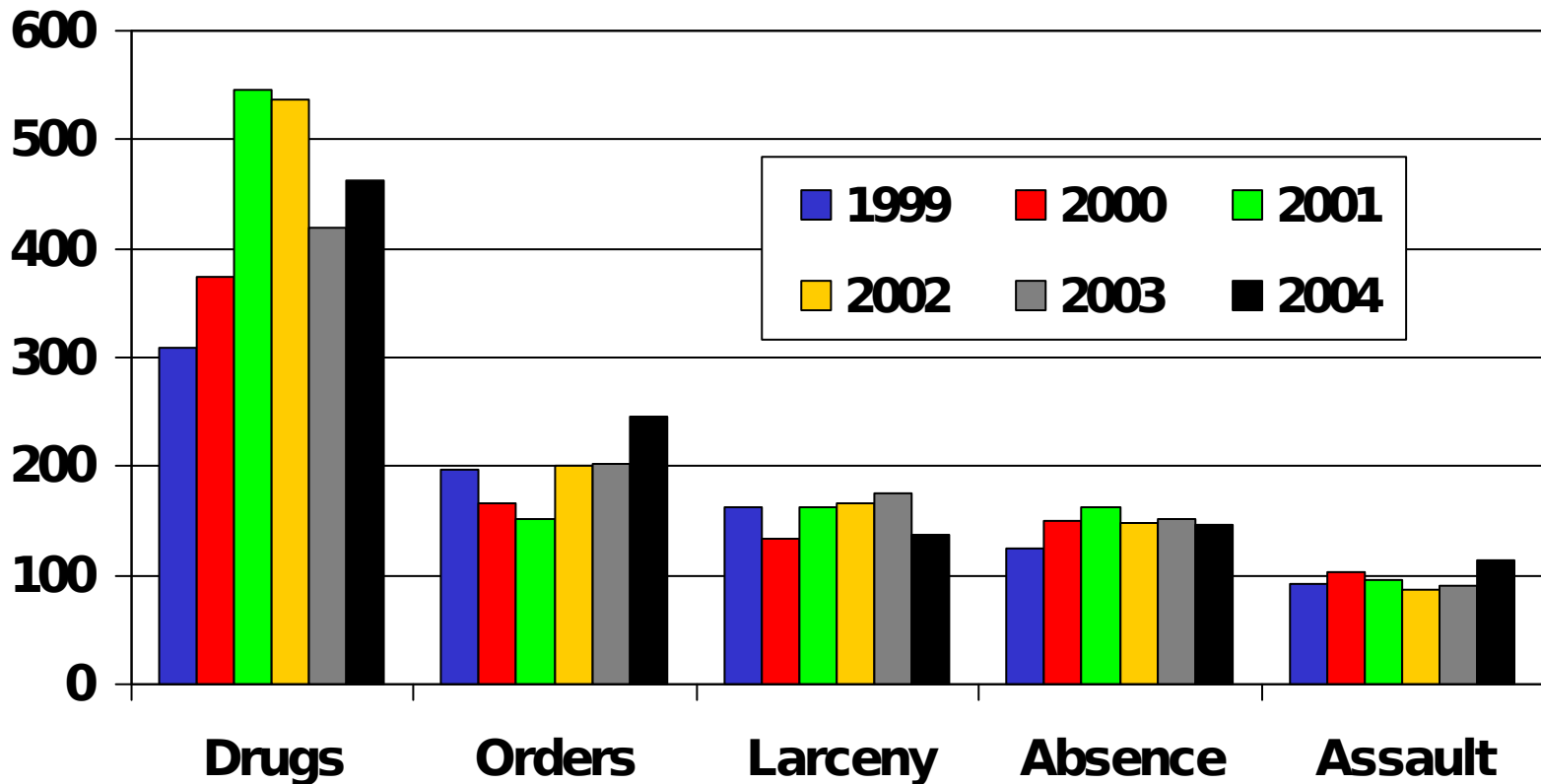
- The recent scorecard for drug offenses:

- ↑ ■ 2000: 20% increase in UCMJ actions - 872 total:
(374 courts and 498 Article 15s)
- ↑ ■ 2001: 21% increase in UCMJ actions - 1,061 total:
(546 courts and 515 Article 15s)
- ↓ ■ 2002: 4% decrease in UCMJ actions - 1,017 total:
(536 courts and 481 Article 15s)
- ↓ ■ 2003: 14% decrease in UCMJ actions - 875 total:
(418 courts-martial and 457 Article 15s)
- ↑ ■ 2004: As of 30 Jun, 481 total UCMJ actions - (229
courts-martial and 252 Article 15s): projected **953**
total



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Most Frequent Court-Martial Offenses

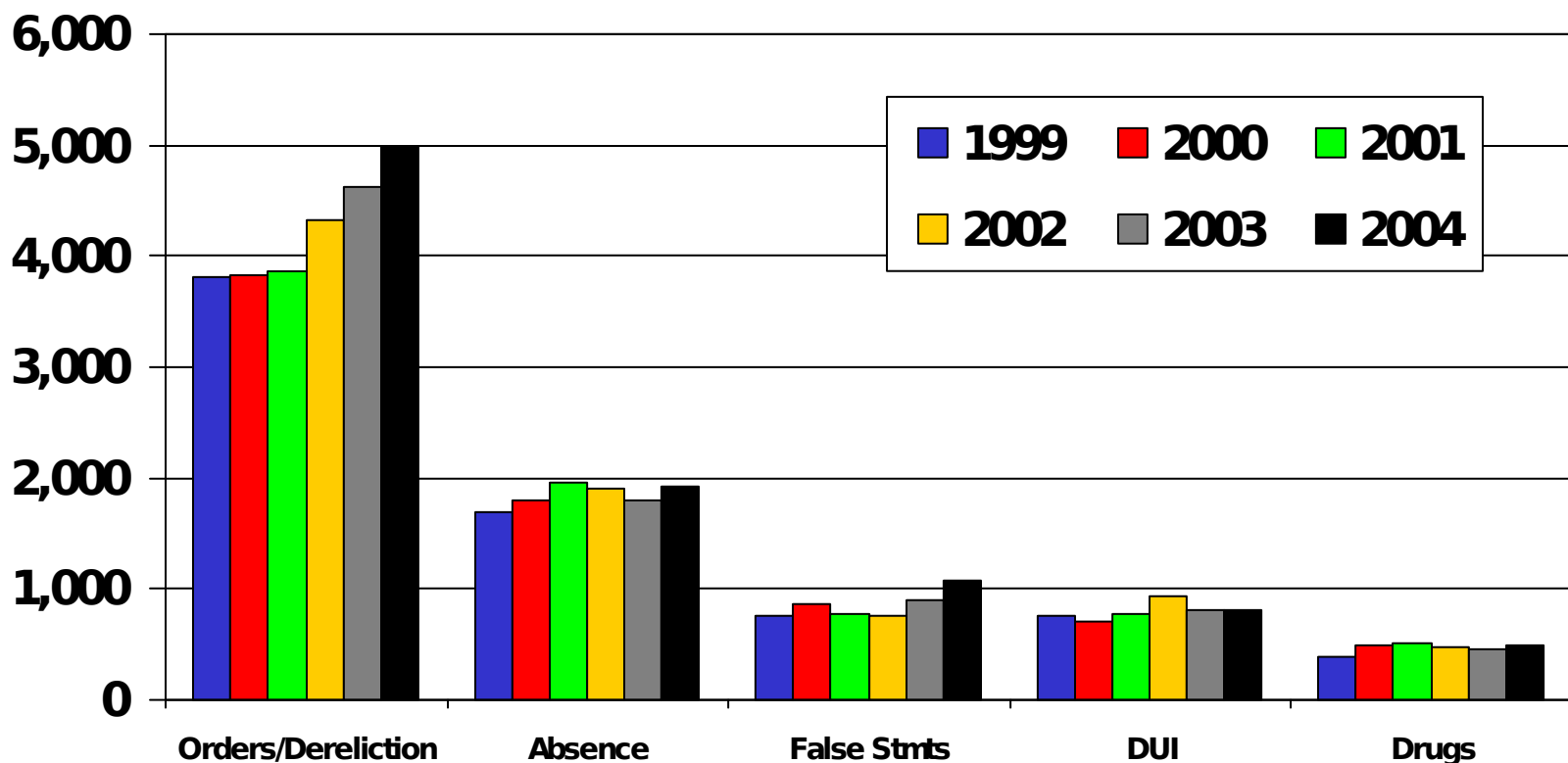


2004 projected as of 31 January



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Most Frequent NJP Offenses

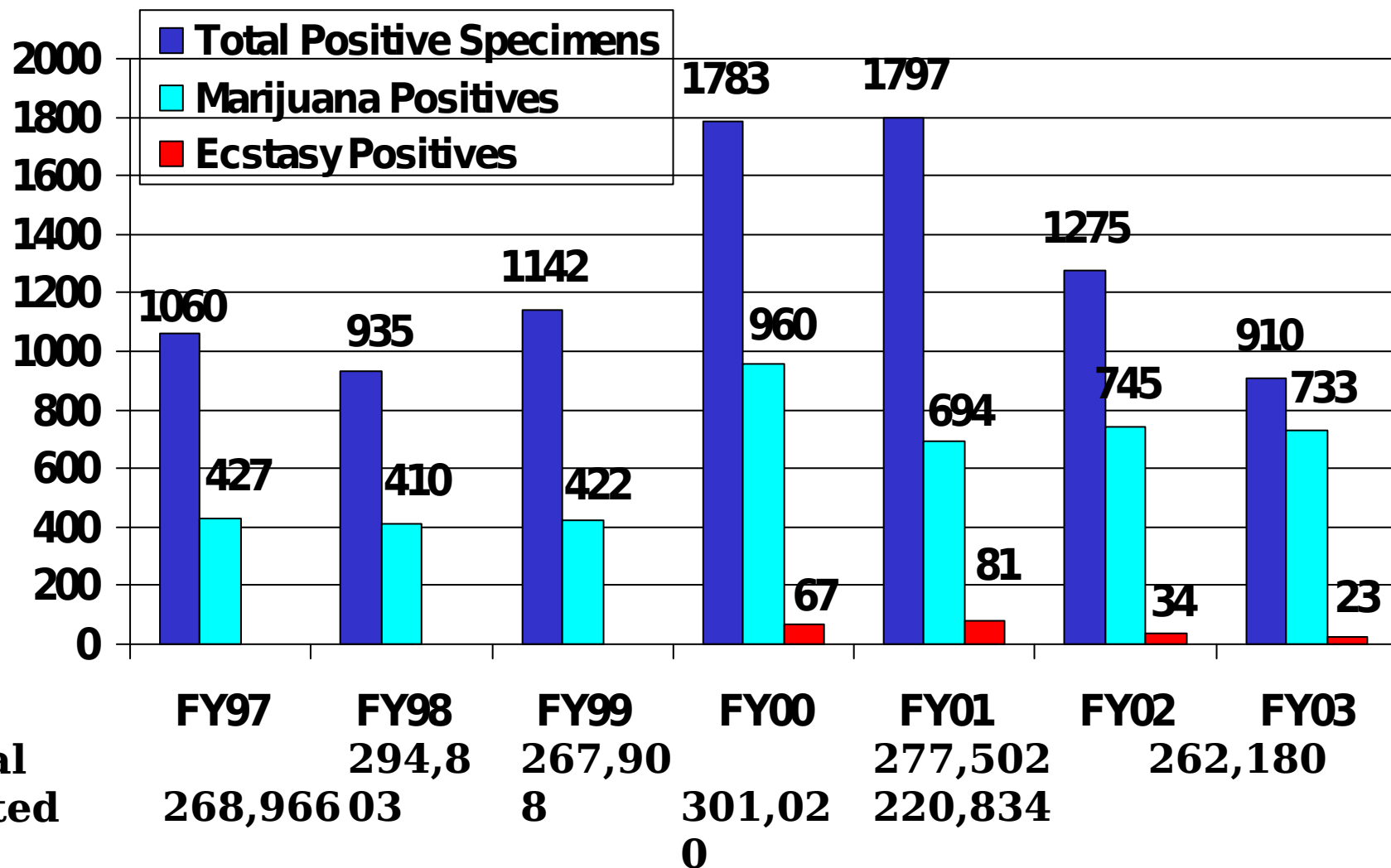


2004 projected as of 31 J



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Urinalysis





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Urinalysis Challenges

- **Assuring randomness**
- **Ensuring urinalysis program is:**
 - **Robust**
 - **Fair**
 - **Efficient**
- **Enhancing testing for ecstasy & other “club drugs”**
 - **Very short life in body**



Sexual Assault

- **Sexual assault issue more complex than it initially seemed**
- **Commanders and 1st Sgts key to success**
 - **Currently working issue, but will need help**
 - **Seeing & understanding the problem are challenges**
- **Sexual assault is a societal problem - so will require a positive, ongoing effort to instill and foster the culture of professional Airmen**



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Sexual Assault: 1st Sgt's Role

- **Be aware of issue**
- **Be aware of**
 - **Base response to 1 Apr SECAF/CSAF letter, *Interim Measure for Victim Support***
 - **Directed commands move forward on interim program for victim care and support**
 - **OSI and SF responses to allegations of sexual assault**
 - **JA Victim and Witness Assistance Program**
- **Read AF Report when released**



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AF Report's Major Findings

- **Policy - No cogent AF-wide sexual assault policy**
- **Commanders unaware of prevalence of sexual assault problem**
- **Education, training and prevention - primarily focused on sexual harassment in the workplace -- not sexual assault**
- **Confidentiality - victim's lack of privacy most frequently quoted barrier to reporting sexual assaults**



AF Report's Major Findings

- **Response - Current sexual assault response programs emphasize investigative / judicial process**
- **Victim care - inadequate**
- **AEF/remote environment - creates unique challenges for sexual assault prevention and response**
- **Resources - MAJCOMs concerned about “out-of-hide” solutions**
- **“Environmental” issues**



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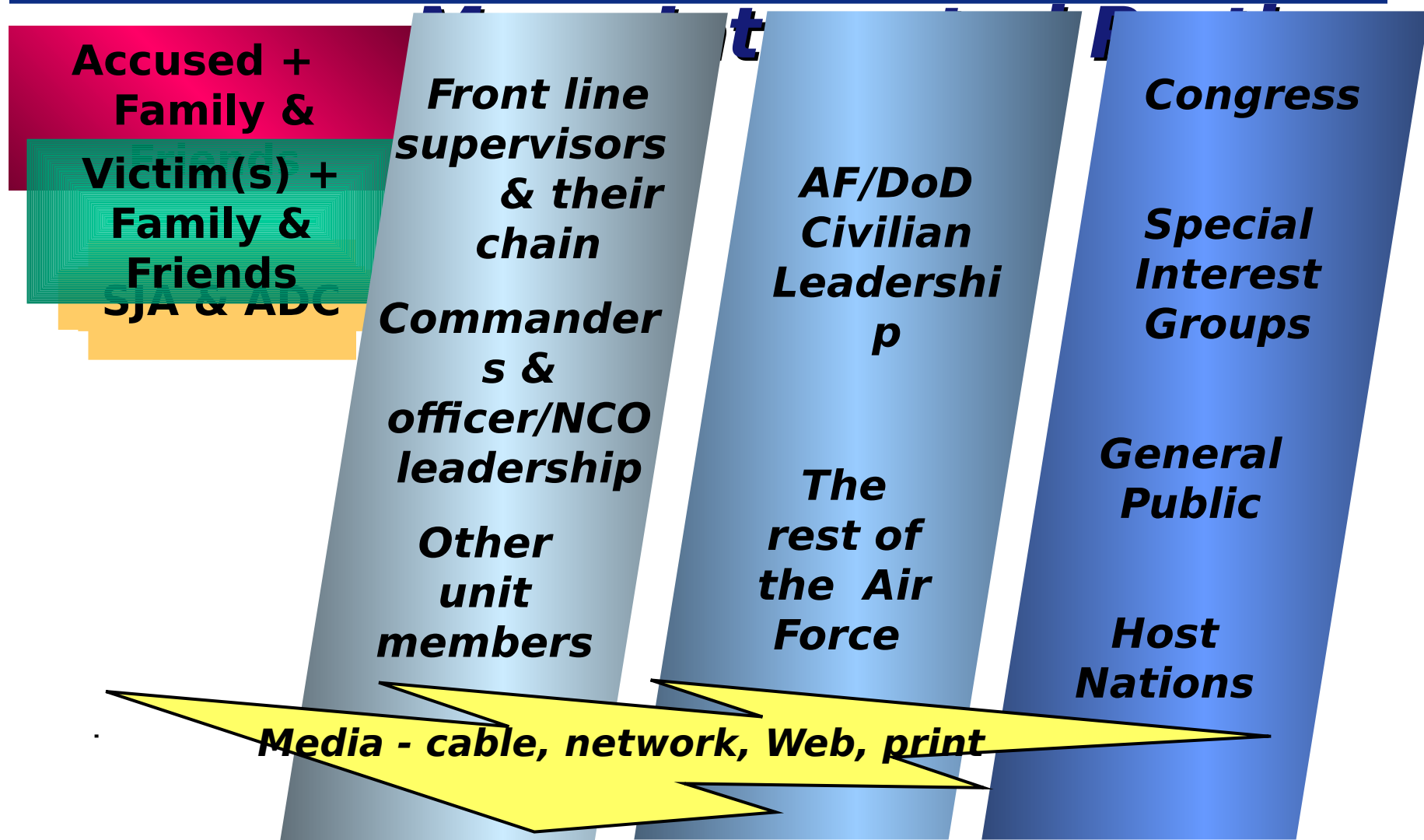
The Military Justice Environment

- **The military justice system - stable yet flexible**
 - **Its core elements have remained constant while staying current (if not ahead of) contemporary legal principles**
 - **Major enhancements in 1969 and 1984**
 - **Continuous reviews and updates**



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Military Justice Environment:



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Military Justice Environment:

The Media -- the Public's Portal

- **The media role**
 - **Pervasive, immediate, 24/7** news plus pundit shows, call-in talk shows, Early Bird, & CNN “48 times a day” can exaggerate any event
 - **Internet and e-mail** increase speed and coverage
 - The “little guy” is greatly empowered
 - **Death or sex** draw frantic attention
 - Death and sex draw even more attention
 - Media is often more interested in **drama** than in right vs. wrong or who wins
 - Art 32s and courts-martial are great drama
 - Active media broadens list of those involved



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High Profile Cases Abound

(Selected cases over past decade)



Navy Tailhook



Black Hawk shootdown



Fairchild B-52 crash



**Spangdahlem F-15 crash
(Mueller/Campbell)**



**CT-43 crash (Commerce
Sec'y Ron Brown)**



Khobar Towers bombing



**Army sexual harassment
cases**



Lt Kelly Flinn



SGM of Army McKinney



Marine EA-6B ski cable cut



Nellis HH-60 mid-air



USS Greeneville



Religious accommodation



Anthrax cases



Tarnak Farms friendly fire



Al Halabi espionage



Abu Ghraib





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Military Justice Environment Framing the Issue

***Those who first clearly frame the issue
can carry the day***

■ Kelly Flinn

- Public relations firm takes credit for avoiding the court-martial by characterizing her as a young, vulnerable, woman who fell in love with a bad man**
- A great story, even if incomplete and incorrect**
- The Air Force didn't effectively rebut the story out of concern for accused's privacy**
- The impact of the CSAF restating the issues**



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Military Justice Environment: Framing the Issue -- Today

- **Lessons learned:**
 - The need for **proactive media engagement** -- and continued engagement
 - Quick response to media and to defense allegations
 - Open Article 32 hearings
 - Ready availability of expert spokespeople
 - **Draft charges carefully** - charge the offense to good order and discipline, not the shotgun
 - **“Your Rationale in 25 Words or Less” Approach**



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Military Justice Environment: Bottom Line

***Military people pay great
attention to
misconduct and the responses to
it
and...
so does everyone else***



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Military Justice Today: First Step

*How Do You
React to this
Complex
Environment?*



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Military Justice Today: First Step

*How Do You
React to this
Complex
Environment?*

*First, understand the
philosophy of discipline*



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Quotable Quotes

A former USAF Vice Chief of Staff said it just right...

"If you have good order and discipline, everything else seems to fall into place"

But he wasn't the first...

"Discipline is the soul of an army"

Lt Col George Washington, 1757



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Discipline in Action



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The Human Misconduct Spectrum

THE OFFENSE

People who most likely would not commit an offense no matter what

**The “impressionables”
People who are highly subject to the influence of their environment.....**

People who are highly likely to commit an offense no matter what

I n t e g r i t

**peers, superiors,
and
circumstances**

e l l e n c e



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The Human Misconduct Spectrum By Offense

MURDER



Relative percentages of the population

SPEEDING

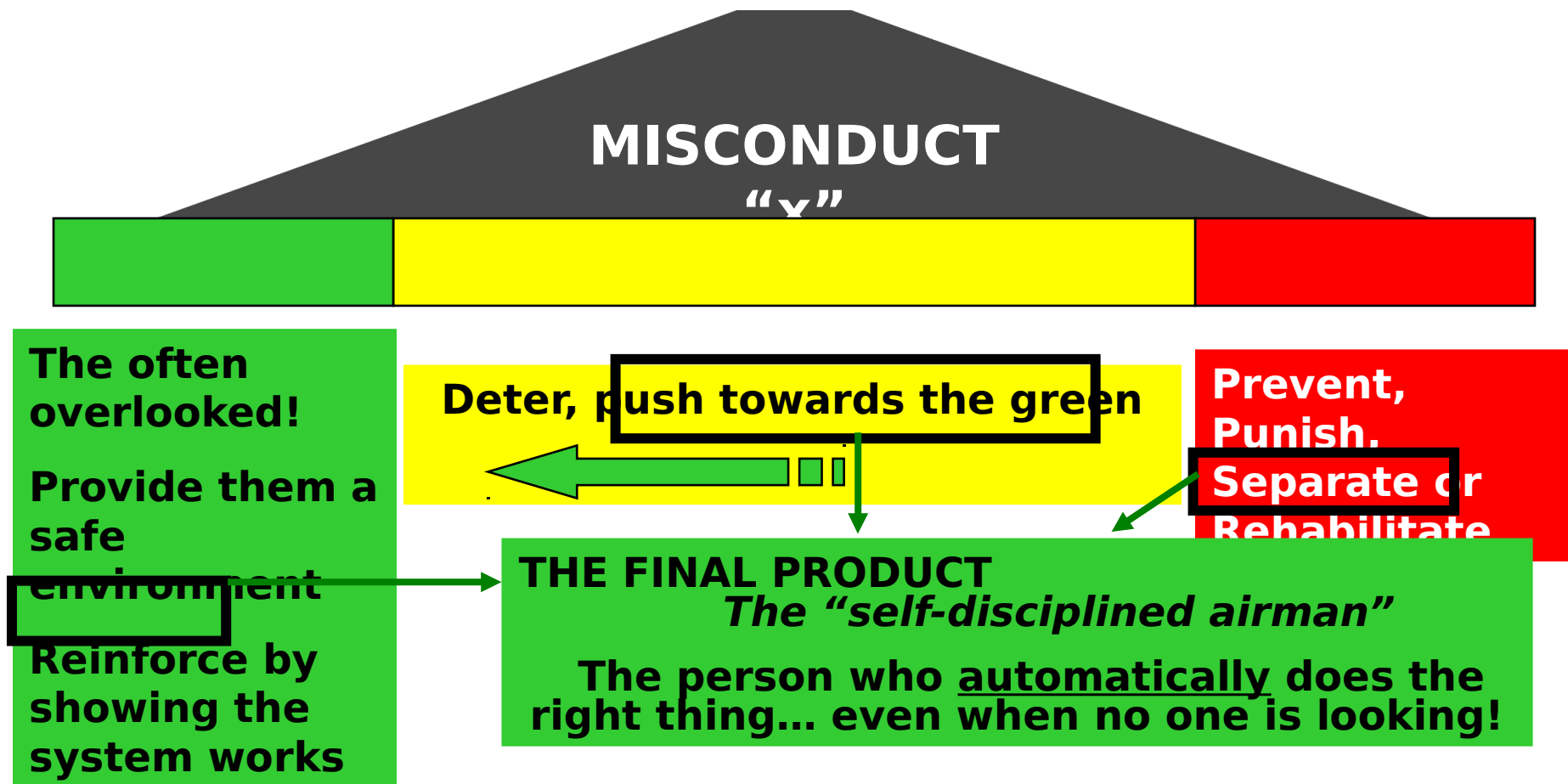


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The Human Misconduct Spectrum Our Objectives



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Military Justice Today: Second Step

**In every case, do the
“*right*” thing for the
“*right*” reason**

**Whatever happens as a
consequence, happens**

***How do you decide what the
“right thing” is?***



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Disposition Options: The Perspective

**“We need more good
old-fashioned butt
chewings!”**

General John P. Jumper

**In other words, handle cases
firmly at the lowest appropriate
level.**

**It might avert another “Kelly
Flinn”**



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Disposition Options: “Extra Training”

- **Allowable IF:**
 - **for training or exercise**
 - **reasonably related to a legitimate goal**
- **However, not allowed:**
 - **if intended to punish or stigmatize the person**
 - **punishment cannot be imposed without due process of law**
 - **to be longer than is required to correct the member’s behavior**



Inappropriate Factors

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- **Air Force standards too tough**
- **Should apply standards situationally**
- **Don't want to "hurt [offender's] record"**
- **First offense demands leniency - no matter what it was**
- **Avoid adverse publicity**
- **Expediency - just get rid of offender**
- **Loyalty demands leniency**
- **"Too hard" to address**
- **Others have done worse**
- **It was only a mistake**
- **"Circle the wagons" - it's one of our guys this time**



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The Tough Cases

- **Double standards - what about officers?**
- **Operations and Maintenance and Mishaps**
 - **Where a small mistake can have terrible results**
- **The “Running a Stop Sign” spectrum**
- **In our society, the results of an action or inaction can determine the forum**
 - **A court-martial is the forum where representatives of our community **decide how to dispose of** serious misconduct and/or serious results**
 - **It’s not the place where we just “punish the guilty”**



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Military Justice Today: Selective Enforcement?

- **Double standards - what about officers?**
 - **What is the effect that discipline seeks?**
- **Racial Disparities**
 - **Military reflects U.S. relative rates**
 - **Observations about military justice system:**
 - **If it's on the blotter, discrimination unlikely**
 - **Lower-level discretion is far less visible, allows room for "closet bigots" to operate**
 - **What to do?**
 - **Constant vigilance; keep doors and ears open**
 - **Preach, live, and reinforce our standards**



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Military Justice Today: Last Step -- The Bottom Line

- **Air Force standards must be:**
 - **Uniformly known**
 - **Consistently applied**
 - **Nonselectively enforced**

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Is Our Forum Defensible?

Fairness Report Card

	Civ	MJ
Suspect Rights		➡
Disciplinary		➡
Options		➡
Pretrial		➡
Investigation		➡
Notif of Charges		➡
Pretrial Release	↔	↔
Legal	↔	↔
Representation	?	?
Trial Procedure		➡
Evidentiary Rules	?	?
Jury		➡
Witness Costs		➡
Verdict		

**By any objective
evaluation,
the military
justice system is
at least as fair as
its civilian
counterpart**



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Legal Assistance

- **Available to all airmen and dependents**
- **Services**
 - **Advice on *all* types of legal issues; assistance in *most* areas**
 - **Preparation of documents (e.g., wills, POAs)**
 - **Tax program**
 - **Mobility processing**
 - **Some criminal matters referred to ADC**



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Preventive Law

- **Constant efforts to identify and address legal pitfalls**
 - **Briefings keep AF personnel up-to-date on important legal issues**
 - **Legal websites help disseminate information**
- **JA-1st Sgt partnership critical to preventing legal difficulties among airmen**



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**QUESTIONS?
COMMENTS?**



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